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August 6, 2003

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AUG - 6 2003

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

BY HAND

Ms Marlene H Dortch
Secretary
Federal Communications Commission
445 12th Street, S W
Washington, D C 20554

**Re: WC Docket No. 03-167
REDACTED - FOR PUBLIC INSPECTION**

Dear Ms Dortch

Enclosed please Z-Tel Communications, Inc.'s opposition to SBC Communications Inc 's application in the above-referenced proceeding Z-Tel is filing a confidential portion of the submission and a redacted version of the entire submission Please stamp and return with the courier the duplicate copy of this filing.

Sincerely,

Michael B Hazzard

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)	
)	
Application by SBC Communications Inc)	WC Docket No. 03-167
for Authorization To Provide In-Region,)	
InterLATA Services in the States of)	
Illinois, Indiana, Ohio, and Wisconsin)	

**OPPOSITION OF
Z-TEL COMMUNICATIONS, INC.**

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August 6, 2003

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**OPPOSITION OF
Z-TEL COMMUNICATIONS, INC.**

Z-Tel Communications, Inc ("Z-Tel"), by its attorneys, hereby submits its comments in response to the Public Notice (DA 03-2344) issued by the Federal Communications Commission ("FCC" or "Commission") in the above-captioned proceeding. The Public Notice invites interested parties to respond to the joint Application of SBC's operating entities to provide in-region, interLATA services in the States of Illinois, Indiana, Ohio, and Wisconsin pursuant to section 271 of the Communications Act of 1934, as amended (the "Act").

I. INTRODUCTION AND SUMMARY

Z-Tel is a competitive local exchange carrier ("CLEC") that offers bundled packages of local, long distance, and enhanced services to residential and small business consumers using the combination of unbundled network elements ("UNEs") known as the UNE Platform, or "UNE-P." At present, Z-Tel provides integrated local, long distance, and enhanced services to more than 200,000 consumers in 46 states, including Illinois, Indiana, Ohio, and Wisconsin.

By these comments, Z-Tel opposes SBC's Application for section 271 authority because SBC does not satisfy competitive checklist item 2, which requires that SBC provide nondiscriminatory access to UNEs at cost-based rates set by the public service

commissions¹ SBC fails to satisfy checklist item 2 by virtue of its on-going efforts to foreclose CLECs from obtaining UNEs at the cost-based rates set by the various state commissions, in particular the Illinois Commerce Commission (“ICC”) and the Indiana Utility Regulatory Commission (“IURC”) All factual statements contained herein are supported by the verification affidavit of Ron A. Walters, Vice President – Industry Policy of Z-Tel, who is primarily responsible for Z-Tel’s co-carrier relationship with SBC²

Because of the magnitude of billing disputes in Indiana and Illinois, Z-Tel initiated formal dispute resolution, under the terms of its interconnection agreements, in July 2002. After a year long negotiation, historical settlement was reached on many items. But as pointed out later in these comments, it is very disturbing that many of the underlying billing system problems remain and the disputes continue monthly. During this negotiation, SBC refused to correct the historical billing for the Indiana and Illinois tariff flow through disputes referenced in these comments. However, SBC has indicated during the last few days that they are willing to re-consider adjusting these historical overcharges in Indiana and accepting some of Z-Tel’s redlined changes to the SBC proposed amendment. This reconsideration appears to be tied to SBC’s pending 271 filings at the FCC and to Z-Tel’s Notice to file Complaint which was recently filed with the ICC and IURC and attached to these comments³. To the extent Z-Tel can work these issues out with SBC on a co-carrier basis, Z-Tel commits to informing this Commission and the state commissions.

¹ 47 U.S.C. § 271(c)(2)(B)(ii)

² This verification affidavit is attached hereto as Tab A.

³ See Tab B and Tab C, attached hereto

II. AMERITECH FAILS TO SATISFY COMPETITIVE CHECKLIST ITEM 2 BECAUSE IT UNLAWFULLY RESTRICTS CLEC ACCESS TO COST-BASED RATES SET BY THE STATE COMMISSIONS

To demonstrate compliance with an item contained in the section 271 competitive checklist, including the pricing prong of checklist item 2, SBC must prove that “it currently furnishes, or is ready to furnish, the checklist item on a nondiscriminatory basis”⁴ Even though each state commission has established TELRIC-compliant UNE rates, SBC has foreclosed CLECs from obtaining such rates by (1) placing artificial restrictions on the interconnection agreement amendment and “opt in” processes, (2) refusing to bill CLECs the TELRIC compliant UNE rates filed in state UNE tariffs, and (3) intentionally misbilling CLECs for UNEs purchased and refusing to correct known billing errors As a result, SBC neither “currently furnishes” nor is “ready to furnish” UNEs at its state commission-set, cost-based rates Therefore, SBC has not and cannot satisfy checklist item 2’s pricing standard, and accordingly the Commission should reject SBC’s Application.

A. The Commission’s Rules Obligate BOCs To Provide UNEs At The TELRIC Rates Set By The State Commission

As the Commission previously has noted, a BOC must charge the state commission-set TELRIC rate for UNEs “unless the different rates could be justified by the costs incurred by the incumbent LEC”⁵ Indeed, the Commission expressly has found that “regulations permitting non-cost based discriminatory treatment are prohibited by the 1996

⁴ See *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, 15 FCC Rcd 3953, 3973-74 at ¶ 52 (1999) (“*Bell Atlantic NY Order*”), *aff’d*, *AT&T Corp v FCC*, 220 F 3d 607 (D C Cir. 2000).

⁵ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15400, ¶ 861 (1996) (subsequent history omitted) (“*Local Competition Order*”)

Act”⁶ The Act’s cost-based pricing standard and prohibition against non-cost based price discrimination for UNEs further is codified in checklist item 2, which mandates that a BOC provide “*nondiscriminatory* access to network elements in accordance with” the *cost-based* pricing standard of section 252(d)(1)”⁷

Put another way, only in cases where a BOC demonstrates that its forward-looking cost of providing a UNE to a specific CLEC is different from the cost of providing that same UNE to other CLECs may a BOC assess a different rate. That is, the TELRIC cost of a BOC’s provision of UNEs to all CLECs is presumptively the same, and the BOC bears the burden of demonstrating that its cost of providing UNEs to different CLECs varies

SBC has failed to meet this burden because there simply is no cost-based rationale for charging different CLECs UNE rates other than those most recently established by the state commissions. However, SBC has maintained and continues to maintain a policy of price discrimination against competitors by aggressively slow rolling implementation of state commission-set TELRIC rates through classic BOC hide-the-ball strategies.

As one example, at the direction of the IURC, SBC on July 18, 2003 filed information “regarding the pricing upon which SBC Indiana is relying in its 271 application.”⁸ In that filing, SBC conceded that there is no single SBC document consisting of its TELRIC rates, rather the current TELRIC rates “are generally reflected in SBC Indiana’s UNE and interconnection tariffs and are available for all *new* interconnection agreements.”⁹

⁶ *Id.*, ¶ 862

⁷ 47 U.S.C. § 271(c)(2)(B)(ii)

⁸ Cause No. 41657, SBC Indiana’s Filing of Pricing Information and Motion for Clarification of July 11, 2003 Entry at 1 (attached hereto at Tab D)

⁹ *Id.*, 2 (emphasis added)

SBC accordingly stated that it “did not predicate its § 271 application on a single price list containing current rates and charges and didn’t develop and provide to the FCC with its application a single price list.”¹⁰ The reason for this is obvious. SBC would then have to provide CLECs with a single set of SBC’s current, state commission-approved TELRIC prices

In any event, for purposes of its “compliance filing” with the IURC, SBC cobbled together a price list ostensibly to demonstrate compliance with the IURC’s order. Insofar as Z-Tel can tell, however, SBC does not bill CLECs from that price list, nor does SBC make that price list available to CLECs in any form. Rather, SBC unilaterally picks and chooses what rates it applies to CLECs, regardless of the plain fact that SBC has the same forward-looking cost of providing the same UNEs to all CLECs in Indiana. For example, SBC-IN is currently billing some CLECs \$5.34 per month for a two wire analog switch port while billing other CLECs \$2.98 per month for an identical switch port. This is blatant rate discrimination, which is precluded under checklist item 2.

SBC’s discriminatory pricing policy and its various efforts to foreclose CLECs, such as Z-Tel, from obtaining state commission-approved TELRIC rates clearly violates checklist item 2’s mandate that SBC provide nondiscriminatory access to its cost-based rates. As demonstrated above with the Indiana example, although SBC has a single set of currently-approved, cost-based rates, SBC will not make those rates available to CLECs. CLECs should not have to posture or otherwise litigate with SBC in order to avail themselves of state commission-determined TELRIC rates. Yet, this is exactly the situation SBC’s rate discrimination policy creates.

¹⁰ *Id.*, 3

B. SBC's Rate Discrimination Policy Violates Competitive Checklist Item 2

The Act obligates BOCs to provide UNEs at the BOC's *current*, state-approved, cost-based rates unless it can demonstrate a cost-based reason exists for price discrimination¹¹. In spite of this clear mandate, rather than just charge CLECs currently-effective TELRIC rates, SBC flouts this obligation by (1) placing artificial restrictions on the interconnection agreement amendment and "opt in" processes, (2) refusing to bill CLECs rates approved in state UNE tariffs, and (3) intentionally misbilling CLECs for UNEs purchased and refusing to correct known billing errors. Each of these items are described below.

i. SBC's impermissible amendment requirements and restrictions on "opt ins"

SBC unilaterally and impermissibly requires contract changes prior to providing cost-based rates to competitors. In addition to unilaterally requiring contract changes prior to implementing its cost-based rates, SBC places material artificial restrictions on the interconnection agreement amendment process and the section 252(i) opt in process in order to maintain its price discrimination practices.

As one example, before SBC will permit CLECs to amend an interconnection agreement to obtain new TELRIC rates or otherwise, SBC's position is that CLECs must agree to the following "reservation of rights" language:

In entering into this Amendment, the Parties acknowledge and agree that neither Party is waiving any of its rights, remedies or arguments with respect to any orders, decisions or proceedings and any remands thereof, including but not limited to its rights under the United States Supreme Court's opinion in *Verizon v. FCC, et al*, 535 U.S. 467 (2002), the D.C. Circuit's decision in *United States Telecom Association, et al v. FCC*, 290 F.3d 415 (D.C. Cir. 2002) ("*USTA decision*"); the FCC's Triennial Review Order, adopted on February 20, 2003, on remand from the *USTA decision* and pursuant to the FCC's Notice of Proposed Rulemaking, *Review of*

¹¹ Local Competition Order, ¶¶ 861-62

Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket No. 01-338 (FCC 01-361) (rel. Dec. 20, 2001), the FCC's Order *In the Matter of the Local Competition Provisions of the Telecommunications Act of 1996*, 15 FCC Rcd 1760 (FCC 99-370) (rel. Nov. 24, 1999), including its Supplemental Order Clarification (FCC 00-183) (rel. June 2, 2000), in CC Docket 96-98, or the FCC's Order on Remand and Report and Order in CC Dockets No. 96-98 and 99-68, 16 FCC Rcd 9151 (2001), (rel. April 27, 2001) ("ISP Compensation Order"), which was remanded in *WorldCom, Inc. v. FCC*, 288 F.3d 429 (D.C. Cir. 2002). Rather, in entering into this Amendment, each Party fully reserves all of its rights, remedies and arguments with respect to any decisions, orders or proceedings, including but not limited to its right to dispute whether any UNEs and/or UNE combinations identified in the Agreement and this Amendment must be provided under Sections 251(c)(3) and 251(d) of the Act, and under this Agreement. Notwithstanding anything to the contrary in this Agreement and in addition to fully reserving its other rights, SBC Indiana reserves its right, to the extent SBC Indiana has not already invoked the FCC ISP terminating compensation in Indiana and incorporated the rates, terms and conditions of such plan into this Agreement, to exercise its option at any time to adopt on a date specified by SBC Indiana the FCC ISP terminating compensation plan, after which date ISP-bound traffic will be subject to the FCC's prescribed terminating compensation rates, and other terms and conditions, and seek conforming modifications to this Agreement. **In the event that a state or federal regulatory or legislative body or a court of competent jurisdiction, in any proceeding, finds, rules and/or otherwise orders that any of the UNEs and/or UNE combinations provided for under this Agreement and this Amendment do not meet the necessary and impair standards set forth in Section 251(d)(2) of the Act, the affected provision will be immediately invalidated, modified or stayed as required to effectuate the subject order upon written request of either Party ("Written Notice").** In such event, the Parties shall have sixty (60) days from the Written Notice to attempt to negotiate and arrive at an agreement on the appropriate conforming modifications required to the Agreement. If the Parties are unable to agree upon the conforming modifications required within sixty (60) days from the Written Notice, any disputes between the Parties concerning the interpretations of the actions required or the provisions affected by such order shall be handled under the Dispute Resolution Procedures set forth in this Agreement.¹²

¹² See Tab E at ¶ 6.2 (bold added). This Indiana amendment provision is substantively identical to that utilized by SBC for interconnection agreement "opt ins" pursuant to section 252(i) of the Act.

This language is difficult to take for many reasons, including SBC's insistence that a CLEC give up rights in order to obtain SBC's cost-based rates, which SBC already has a pre-existing duty to provide as a matter of law.

For example, in the case of an interconnection agreement amendment, if a CLEC wishes to obtain state commission-set TELRIC rates, why does the CLEC have to agree that SBC may "immediately invalidate" any provision of the underlying interconnection agreement based on SBC's unilateral review of the impending Triennial Review Order, or any other order for that matter? The answer is simple – no such obligation exists. A CLEC has absolutely no obligation to give up substantive portions of its underlying interconnection agreement and related rights of process in order to obtain state-mandated TELRIC prices. Yet this is exactly what SBC requires, and this requirement without question results in unlawful rate discrimination, which is antithetical to checklist item ii

SBC's "amendment" position also is unreasonable language because SBC does not allow retroactive adjustments in situations when SBC has failed to implement its commission-approved cost-based rates to all CLECs. The following language appears in the Illinois amendment that SBC requires before it will flow through the ICC-approved TELRIC rates

Notwithstanding anything to the contrary, including anything in the Agreement or this Amendment (including Section 2), as between CLEC and SBC Illinois, in no event shall this Amendment result in the retroactive application of any rate, rate element, or associated charge to any date earlier than the 30th day after the Amendment is approved by the ICC or, if absent such ICC approval, the date such Amendment is deemed approved by operation of law, for use between CLEC and SBC Illinois. By way of example only and without limiting the foregoing, if CLEC adopted the Agreement and/or this Amendment ("Adopting CLEC") pursuant to 47 U.S.C. § 252(i), the tariffed rates, rate elements, and associated charges applicable under this Amendment would only apply between Adopting CLEC and SBC Illinois prospectively beginning from

the 30th day following the ICC's order approving the Adopting CLEC's Section 252(i) adoption or, if absent such ICC approval, the date the Agreement and/or this Amendment is deemed approved by operation of law ("Section 252(i) Effective Date"), for use between Adopting CLEC and SBC Illinois. As between Adopting CLEC and SBC Illinois, the tariffed rates, rate elements, and associated charges would not in any manner apply retroactively prior to the Section 252(i) Effective Date, and the Section 252(i) Effective Date shall be the same date as the Amendment Effective Date.¹³

Rather than provide its cost-based rates on a nondiscriminatory basis, SBC will provide its cost-based rates only prospectively and only after 30 days from approval of any such amendment by the ICC, which can take up to 90 days. Thus, SBC's default position is to foreclose implementation of its cost-based rates for as long as possible, and this refusal to furnish its cost-based rates to CLECs violates checklist item 2.

ii. SBC's unlawful refusal to bill competitors at tariffed UNE rates

In addition to placing unlawful restrictions on the availability of its TELRIC rates through its unilateral interconnection agreement amendment policy, SBC – in spite of the contrary assertions in its Application – refuses to bill Z-Tel the commission approved tariffed UNE rates. This refusal is yet another effort to slow roll implementation of TELRIC-based rates and to price discriminate against individual CLECs.

In its Application, SBC asserts that in Illinois, "any CLEC with an existing interconnection agreement may also take service under the terms, conditions, and rate applications contained in Illinois Bell's combinations tariff."¹⁴ This just is not the case. Z-Tel, for one, literally has spent months upon months attempting to purchase UNEs at SBC's tariffed rate in Illinois and Indiana to no avail. Most recently, SBC billed Z-Tel more than \$157,000 in

¹³ See ¶ 15 of SBC's proposed "tariff flow through" amendment, which is attached hereto at Tab F.

¹⁴ Application at 47.

charges for the month of July 2003 above SBC's TELRIC rates set by the Illinois Commission, which amounts to over 20% of total billed charges to Z-Tel in Illinois.¹⁵ After a protracted and fruitless effort to negotiate a resolution of this matter with SBC, including formal dispute resolution initiated in July 2002 and as outlined by the SBC/Z-Tel interconnection agreements, Z-Tel recently noticed its intention to file a complaint with the ICC in order to put an end to SBC's rate discrimination.¹⁶

In contrast to Illinois, SBC is more candid about its price discrimination policy in Indiana. There, SBC will provide its commission-approved tariffed TELRIC rates only where in SBC's sole judgment "the parties provided for the incorporation of tariffed rates."¹⁷ In July 2003 alone, SBC assessed on Z-Tel more than \$47,000 in fees over SBC's TELRIC rates, which equates to approximately 24% of total billed charges to Z-Tel in Indiana.¹⁸ As in the case for Illinois, Z-Tel has noticed a complaint against SBC before the IURC to address SBC's unlawful price discrimination.¹⁹

iii. SBC's intentional misbilling of UNEs and refusal to correct permanently known underlying rate errors

Not only does SBC place material restrictions on CLECs seeking to avail themselves of the TELRIC rates for UNEs, SBC consistently and without notification misbills CLECs for these items. This knowing and intentional misbilling forecloses CLECs from

¹⁵ Tab G contains a spreadsheet showing amounts above tariffed TELRIC rates that SBC has billed Z-Tel for both Illinois and Indiana.

¹⁶ See Tab B.

¹⁷ Application at 50.

¹⁸ See Tab G.

¹⁹ A copy of the Notice of Anticipated Filing of Complaint in Indiana is attached at Tab C.

obtaining UNE rates, and forces CLECs into protracted “negotiations” with SBC in order to obtain the proper rate

Two examples of SBC’s use of its billing system to engage in unlawful price discrimination are attached hereto ²⁰ The first example demonstrates that although the Illinois TELRIC rate for a service order charge is \$1.02, SBC routinely (but inconsistently) charges Z-Tel \$14.60. The second example demonstrates that SBC changes its “TELRIC” rate for shared transport (known as “ULS-ST”) every few months without any warning or any rationale. SBC just changes the rate and expects Z-Tel to pay it. Z-Tel is then left to fight with SBC for months on end for billing credits to remedy SBC’s failures.

Worse, even though SBC may actually provide bill credits at some point, SBC refuses to update its underlying billing system to correct known errors. As a result, these same problems persist month in and month out with no end in sight ²¹ This patent refusal to correct known billing errors demonstrates that SBC’s conduct in this regard is both knowing and willful.

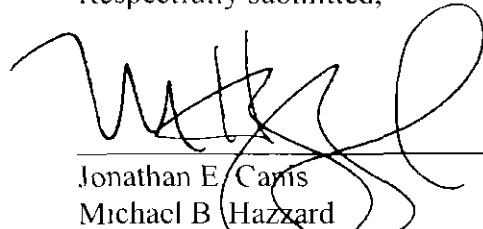
²⁰ See Tab H and Tab I.

²¹ Examples of this chronic SBC failure are attached hereto at Tab J.

III. CONCLUSION

As demonstrated above, Ameritech does not fully comply with pricing requirements of competitive checklist 2. Accordingly, the Commission should not approve the Application until such time as SBC has demonstrated affirmatively that it has abandoned its policy of unlawful price discrimination as described herein.

Respectfully submitted,



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Counsel for Z-Tel Communications, Inc

August 6, 2003

TAB A

VERIFICATION

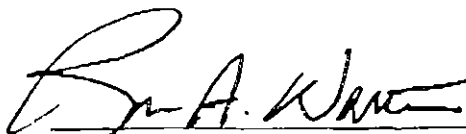
State of Florida)
)
) ss.
)
County of Hillsborough)

Ron A. Walters, Affiant, being duly sworn/affirmed according to law, deposes and says that

He is the Vice President, Industry Policy of Z-Tel Communications, Inc. responsible for Z-Tel's business and operational relationship with SBC Communications Inc. and its affiliates.

That he is authorized to and does make this affidavit for Z-Tel Communications, Inc.;

That the facts and statements above set forth in the Opposition of Z-Tel Communications, Inc. to SBC Communications Inc.'s application for section 271 authority in Illinois, Indiana, Ohio, and Wisconsin are true and correct to the best of his knowledge, information, and belief and that he expects Z-Tel Communications, Inc. to be able to prove the same at any hearing hereof.



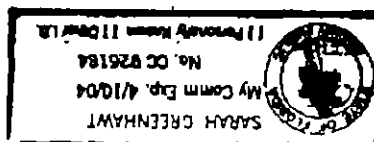
Ron A. Walters
Vice President, Industry Policy
Z-Tel Communications, Inc.

Sworn and subscribed before me this 6 day of August, 2003



Signature of official administering oath

My commission expires. 4/10/04



DC01/HAZZM/201741 1

TAB B

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Mark Kerber

SBC Illinois

225 West Randolph Street

Chicago, Illinois 60602

RE Section 13-515 Notice of Potential Complaint

Dear Mark

Please be advised that we are counsel to Z-Tel Communications on matters that relate to SBC Ameritech's discriminatory and unlawful billing practices in Illinois. Pursuant to Section 13-515(c) of the Public Utilities Act (the "Act"), this letter is sent on behalf of Z-Tel to notify Illinois Bell Telephone Company d/b/a SBC Ameritech ("SBC") of Z-Tel's intent to file a complaint with the Illinois Commerce Commission if this practice is not ceased immediately, and if SBC does not immediately take action to correct SBC's past practices of assessing discriminatory charges against Z-Tel. Despite repeated demands by Z-Tel, SBC continues to assess Z-Tel with rates and charges that are not permitted under Z-Tel's Interconnection Agreement, SBC Ameritech's tariffs, and the decisions of the Illinois Commerce Commission. More significantly, SBC continues to assess rates and charges against Z-Tel that are discriminatory, and greater than the rates and charges assessed against other carriers operating in Illinois.

For approximately 2 years, SBC has improperly assessed numerous rate elements against Z-Tel that are improper and discriminatory. These rate elements include nonrecurring charges for line installation, service ordering, and record ordering charges, and monthly recurring charges for basic line ports. More specifically, SBC has improperly assessed rate elements against Z-Tel for, at a minimum the following network elements.

USOC NR9F6 (Svc Ord Chrges-Record Ord-Basic Port),
USOC NR9UU (Svc Order Charge-Init Basic Port);
USOC NR9UY (Subseq Charge Charge R Order),

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USOC SEPUC (Line Connection Svc Establishment),
USOC SEPUP (Processing Chg-Establish),
USOC UJR (Basic Line Port-Residence), and
USOC UPC (Basic Line Port-Business)

After repeated demands by Z-Tel SBC refuses to provide credits to Z-Tel for these excessive charges that have occurred for over two years and continues to bill Z-Tel incorrectly

As you are aware, SBC has acknowledged several billing problems in providing services to CLECs. Notably, SBC filed an affidavit with the Illinois Commerce Commission in its 271 proceeding (ICC Docket No. 02-0662) in which SBC acknowledges that it has engaged in discriminatory billing practices with CLECs for Service Order, Record Order, and Port charges:

In general, the misapplication of charges involves seven specific USOCs that apply to standalone UNE loops and standalone ports, but not to UNE combinations (i.e. the UNE-P). When a CLEC orders a UNEP migration, USOCs NR9F6 (Svc Ord Chrges-Record Ord-Basic Port) and SEPUC (Line Connection Svc Establishment) should not apply to the order. Similarly, *USOCs NR9UU (Svc Order Charge-Init Basic Port), NR9UY (Subseq Change Charge R Order, SEPUP (Processing Chg-Establish), UJR (Basic Line Port-Residence), and UPC (Basic Line Port-Business) should not apply to any UNE-P order.* In the context of electronically processed orders, these charges are normally suppressed through use of a "FID". It appears, however, that, in limited instances, these charges were not suppressed.

Silver Surrebuttal Affidavit, fn. 1. In this statement, Mr. Silver acknowledges that a CLEC ordering UNE-P should not be billed for the rate elements that have been assessed against Z-Tel.

Moreover, SBC's practices in assessing one rate against certain carriers, and another rate against Z-Tel is a clear and direct violation of state and federal law, including Section 13-514 of the Illinois Public Utilities Act. The federal Communications Act requires that the rates for interconnection be established pursuant to the TELRIC principles outlined by 47 U.S.C. § 252(d), as well as the FCC's regulations, 47 C.F.R. 51.505. Moreover, other provisions of the Act require that the rates, terms and conditions for Interconnection be nondiscriminatory:

- a. § 251(c) each incumbent local exchange carrier has the following duties:
 - (2) INTERCONNECTION.--The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network—

* * *

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Page Three

(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252.

b § 251(c)(3) UNBUNDLED ACCESS --The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements . . . on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. . .

c § 252(c) (c) STANDARDS FOR ARBITRATION --In resolving by arbitration under subsection (b) any open issues and imposing conditions upon the parties to the agreement, a State commission shall--

* * *

(2) establish any rates for interconnection, services, or network elements according to subsection (d), and

* * *

(d) PRICING STANDARDS.--

(1) INTERCONNECTION AND NETWORK ELEMENT CHARGES --Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section--

(A) shall be--

- (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and
- (ii) nondiscriminatory .

47 U S C §§ 251, 252

Section 271 of the Federal Communication Act also requires that, as a precondition to receiving authority to provide interLATA services, SBC must provide nondiscriminatory access to network elements

These provisions of federal law make clear that SBC must price *all* network elements made available to CLECs at TELRIC based prices, and that it may not discriminate against CLECs in the rates that are charged for network elements. In *Michigan Bell Telephone Co. v Strand*, 305 F 3d 580 (6th Cir 2002), the Court held that SBC may not charge one CLEC a rate

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different that it charges to another CLEC because this would constitute discrimination, particularly if the rates are assessed under the Telecommunications Act of 1996.

Ameritech readily concedes that the term "nondiscriminatory" means that it cannot discriminate among CLECs or between CLECs and itself in the provision of unbundled network elements

305 F.3d at 591, citing ¶ 218 of the FCC First Report and Order, CC Docket No. 96-98.

Illinois law similarly prohibits SBC from assessing one rate against one CLEC, while assessing a different rate against another CLEC. 220 ILCS 5/13-505.2. Moreover, Section 13-801 requires that SBC provide network elements to CLECs at cost-based rates, and on terms that do not discriminate. 220 ILCS 13-801(a); (g). In addition, any rate element made available by SBC that is contained in its tariffs must be provided to all CLECs on the same rates, terms and conditions.

Sec. 13-505.4 Provision of noncompetitive services

(a) A telecommunications carrier that offers or provides a noncompetitive service, service element, feature, or functionality on a separate, stand-alone basis to any customer shall provide that service, service element, feature, or functionality pursuant to tariff to all persons, including all telecommunications carriers and competitors, in accordance with the provisions of this Article.

220 ILCS 5/Section 13-505.4.

Z-Tel's Interconnection Agreement also requires SBC to apply tariff rates to the network elements purchased by Z-Tel. SBC shall "take all steps reasonably necessary to ensure that such SBC/CLEC Interconnect Tariff" would be applied to Z-Tel. SBC Illinois/Z-Tel Interconnection Agreement, Article XXIX.2 Tariffs. The agreement also requires SBC to provide retroactive adjustments. "such amended or new rates, charges or prices shall be effective as if such rates, charges and prices were originally established in the applicable TELRIC Order." (Pricing Schedule – Illinois, Page PS-1, Footnote 1)

The rates that SBC initially incorporated into its Interconnection Agreements are a direct result of the Commission's decision in ICC Docket No. 96-0458, which established recurring rates for interconnection pursuant to the 47 U.S.C. § 252(d). These rates were later supplemented and/or modified through the Commission's orders in ICC Docket No. 00-0700. The nonrecurring rate elements for SBC's charges were established in ICC Docket No. 98-0396. These proceedings modified the applicable rate for unbundled network elements under Section

Mark Kerber
August 4, 2003
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252(d) of the federal Communications Act. Therefore, SBC has an obligation under state and federal law to assess only those rate elements that were adopted by the ICC in these proceedings

Notwithstanding the foregoing, SBC has assessed rate elements against Z-Tel that are inconsistent with the applicable ICC order. For example, the ICC held in ICC Docket No. 00-0700 that the appropriate TELRIC rate for a residential line port is \$2.18. However, SBC continues to assess Z-Tel with a rate of \$5.01, and will not provide Z-Tel with a credit of these overcharges.

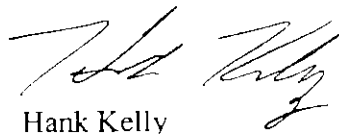
Z-Tel has attempted to resolve this continuing dispute on many, many occasions through the normal dispute resolution channels with SBC. As recently as July 16, 2003, Ron Walters sent a letter to SBC requesting that SBC provide credits to Z-Tel to reflect the nondiscriminatory rates adopted by the ICC, and that SBC modify its billing practices to immediately assess the legal rate.

In our opinion, SBC's billing practices are a direct violation of Sections 251, 252, and 271 of the federal Communications Act, the Illinois Public Utilities Act, and Z-Tel's Interconnection Agreement.

SBC's continued refusal to properly bill Z-Tel is having a substantial adverse effect on Z-Tel's ability to manage its accounts, and is adversely affecting Z-Tel's ability to provide service to its customers. Z-Tel hereby notifies SBC that should this problem not be resolved within the next forty-eight (48) hours, Z-Tel reserves the right to file a complaint at any time thereafter with the Illinois Commerce Commission pursuant to Section 13-515 of the Act.

Please contact me as soon as possible so that we may make arrangements to cure this unlawful practice in a way that is satisfactory to Z-Tel.

Sincerely,



Hank Kelly

HTK cb

cc Ron Walters
Tom Koutsky

TAB C

ROBERT K. JOHNSON

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July 28, 2003

VIA HAND DELIVERY

Ms. Bonnie Simmons
Regulatory Counsel
SBC Indiana
240 N. Meridian St., Room 1830
Indianapolis, IN 46204

Re: Notice of anticipated filing of complaint

Dear Ms. Simmons:

Pursuant to IURC 7-7-3, Z-Tel Communications, Inc. (Z-Tel) provides notice to SBC Indiana (SBC) that it may, at any time after ten business days, file a complaint with the Indiana Utility Regulatory Commission (IURC or commission) alleging violation of an interconnection-related commission order.

SBC refuses to comply with the order approved by the IURC in Cause No. 40611, Phase 1, on March 28, 2002 ("Order"). In particular, SBC refuses to comply with the Order's requirements that SBC tariff the rates established by the Order and provide those rates to competitors such as Z-Tel. Order at 59-60. The complaint will address SBC's violations of the Order that occurred and still are occurring.

The violation results from SBC's refusal to provide commission-ordered recurring and non-recurring rates for Unbundled Network Elements (UNEs) to Z-Tel. Although SBC provides the commission-ordered rates to other competitive carriers, SBC has billed and continues to bill Z-Tel the incorrect rates.

Since July 2002, Z-Tel has attempted to resolve these disputes, along with many other billing disputes, through the formal dispute resolution mechanisms in its interconnection agreements. Most recently, on July 16, 2003, Z-Tel sent SBC a letter again seeking resolution of these disputes. SBC has not responded in writing to that letter and the parties have been unable to reach any agreement.

SBC's conduct directly affects Z-Tel's ability to provide uninterrupted service to its customers and/or precludes the provisioning of service, which entitles this dispute to expedited review. Specifically, as a result of SBC's refusal to charge Z-Tel the commission-ordered UNE rates, Z-Tel is overcharged and also is paying higher rates than other similarly situated carriers that pay the commission-ordered rates. SBC's continued violation of the Order is discriminatory and imposes an unfair competitive disadvantage.

Very truly yours,
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